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# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 306. 94.

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THOMAS W. STEWART, ADMINISTRATOR OF THE ES-  
TATE OF JOHN ANDREW CASEY, PLAINTIFF IN  
ERROR,

*v.s.*

THE BALTIMORE AND OHIO RAILROAD COMPANY.

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IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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FILED JANUARY 6, 1896.

(16,128)

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THOMAS W. STEWART, ADMINISTRATOR OF THE ES-  
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1 In the Court of Appeals of the District of Columbia.

THOMAS W. STEWART, Adm'r, &c., Appellant, }  
*vs.* } No. 403.  
 THE BALTIMORE AND OHIO RAILROAD COMPANY. }

Supreme Court of the District of Columbia.

THOMAS W. STEWART, Administrator of the Es- }  
 tate of John Andrew Casey, Late of the District }  
 of Columbia, } Law. No. 29581.  
*vs.* }  
 THE BALTIMORE AND OHIO RAILROAD COMPANY. }

UNITED STATES OF AMERICA, }  
*District of Columbia,* } ss :

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

*Declaration. Filed April 1st, 1889.*

THOMAS W. STEWART, Adm'r of the Estate of }  
 John Andrew Casey, Late of the District of }  
 Columbia, } Law. No. 29581.  
*vs.* }  
 THE BALTIMORE AND OHIO RAILROAD COMPANY. }

1889, April 1st. Declaration, &c., filed.

" May 4th. Plea, " not guilty," filed.

1894, " 26th. Plea withdrawn and demurrer to declaration filed.

1894, October 20th. Demurrer to declaration sustained, with leave to plaintiff to amend.

2 *Amended Declaration.*

Filed October 22, 1894. J. R. Young, clerk.

In the Supreme Court of the District of Columbia.

THOMAS W. STEWART, Adm'r of the Estate of }  
 John Andrew Casey, Late of the District of }  
 Columbia, } Law. No. 29581.  
*vs.* }  
 THE BALTIMORE AND OHIO RAILROAD COMPANY. }

Amended declaration.

Thomas W. Stewart, administrator of the estate of John Andrew Casey, late of the District of Columbia, sues the Baltimore and Ohio

railroad, a corporation created and existing under and by virtue of the laws of the State of Maryland and doing business in the State of Maryland and also in the District of Columbia, and for cause of action say- that the said defendant, The Baltimore and Ohio Railroad, was, at the time hereinafter mentioned and set forth, a common carrier of passengers and goods and chattels for hire in the State of Maryland (as well as in said District of Columbia under and by virtue of certain laws thereof), and of mails of the United States and of postal clerks and employees engaged and employed in connection with the carrying of the mails of the United States of America on, over, along, and by means of the said railroad of the defendant at different points and places in the State of Maryland and the District of Columbia, and that among other places and points from which said mails were so carried (with said postal clerks as aforesaid) was from and to the city of Washington and in the State of Maryland along and over the defendant's said railroad in said State between certain stations or locations of said railroad commonly known and called Dickerson and Tuscarora; that on or about the 6th day of October, 1888, the said Andrew Casey, deceased, was employed and engaged as a postal clerk on the said railroad of the defendant in connection with certain mails of the United States, and then and there, on a car of said defendant, between said localities or stations, and while being carried on said road in said capacity as postal clerk in connection with said mails as aforesaid, by the wrongful acts, negligence, and carelessness of the defendant, its servants, and agents in charge of and connected with said railroad and cars of defendant on which the mails aforesaid were being carried and without any negligence on his part, a collision took place between said cars, engines, and machinery and certain other cars, engines, and machinery of said defendant, whereby and by reason of which the said John Andrew Casey lost his life and was killed, and by reason of said collision, accident, and death the plaintiff is entitled to maintain an action against the defendant and recover damages from the defendant by reason of its wrongful acts, neglect, carelessness, and improper conduct aforesaid, and because of the death of said intestate, John Andrew Casey.

And the plaintiff further says that the said John Andrew Casey left surviving him no parent or child, but only his wife, Alice Triplett Casey, for whose benefit and to whose use this action is brought.

And the plaintiff claims for her use and benefit damages for the said wrongful acts, negligence, and fault of the defendant, its servants and agents as aforesaid, the sum of ten thousand dollars (\$10,000.00), besides costs of this suit.

Second count. And for a further cause of action the plaintiff says that on or about the 6th day of October, 1888, the defendant was the owner of a certain railroad commonly called and known as the Baltimore and Ohio railroad, existing under and by virtue of the laws of the State of Maryland, and within the limits of the District of Columbia by virtue of acts of the Congress of the United States, and having an office and a place of business in said District, and

on or about said day was engaged in operating said railroad by means of engines, cars, carriages, conductors, and other employees and agents and servants, and in the carrying of passengers thereon for hire; and also under contracts made by virtue of the laws of the United States in such case made and provided in carrying mails of the United States, and also in connection with said mails in carrying agents of the Post Office Department of the United States and postal clerks; and that said defendant, on or about said day, among others, admitted and received on its cars and train one John Andrew Casey as a postal clerk, he being regularly and duly appointed such clerk, and having as such clerk a right to be conveyed and carried on said car and train, and that among the points between which he was authorized and empowered to act as such postal clerk as aforesaid, and to be carried and conveyed to and fro by said defendant was from the city of Washington to and between Dickerson and Tascarora, stations on said railroad of the defendant in the State of Maryland; and that while the said John Andrew Casey was properly and legally on said car of said defendant as said postal clerk, the defendant, its agents and employees having control of and management of one of its said cars, by its and their carelessness, negligence, indifference, and want of due care and proper attention, allowed a collision to take place between one of its said engines and trains on its said railroad, and under the care of its agents and employees, who were also careless, negligent, and indifferent, whereby and by reason of which negligence and collision aforesaid, without any want of due and proper care on his part, the said John Andrew Casey while on said mail train as a postal clerk aforesaid was immediately killed, by reason whereof the plaintiff, as the administrator of the estate of the said John Andrew Casey, is entitled to maintain an action against the said defendant for the recovery of damages arising out of the death of the said John Andrew Casey for and on behalf of the wife of the said John Andrew Casey, to wit, Alice Triplett Casey, the said John Andrew Casey having left surviving him no parent or child, but only his said wife.

4 And the said plaintiff claims damages as aforesaid by and because of the wrongful acts and negligence of the defendant, its agents, servants, and employees, as aforesaid, in the sum of ten thousand dollars (\$10,000.00), besides costs of this suit.

And the plaintiff says that the wrongful act, neglect, and default complained of, to wit, the said negligence, carelessness, recklessness, and improper conduct aforesaid of the defendant, its servants, and agents, were committed and occurred in the said State of Maryland, by the statute law of which said State, to wit, a certain act or law duly enacted as chapter —, sections 1-4, Revised Code of Maryland, 1878, page 724, provides as follows:

SECTION 1. Whenever the death of a person shall be caused by the wrongful act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued, shall be liable to an action for dam-

ages, notwithstanding the death shall have been caused under such circumstances as amount in law to felony.

SECTION 2. Every such action shall be for the benefit of the wife, husband, parent or child of the person whose death shall have been so caused, and shall be brought by and in the name of the State of Maryland, for the use of the person entitled to damages, and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the above-mentioned parties, in such shares as the jury by their verdict shall find and direct; provided, that not more than one action shall lie for and in respect of the same subject-matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of the deceased person.

SECTION 3. In every such action, the equitable plaintiff on the record shall be required, together with the declaration, to deliver to the defendant, or his attorney, a full particular of the persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

SECTION 4. The following words and expressions used in the three preceding sections are intended to have the meaning hereby assigned to them respectively, so far as such meanings are not excluded by the context, or by the nature of the subject-matter that is to say: the word person shall apply to both politic and corporate, and all corporations shall be responsible under the three preceding sections for the wrongful acts, neglect or default, of all agents employed by them.

COOK & SUTHERLAND,

*Att'ys for Plf.*

5 The defendant is to plead hereto on or before the first day of the first special term of the court, occurring twenty days after service hereof; otherwise judgment.

COOK & SUTHERLAND,

*Att'ys for Plf.*

*Demurrer to Amended Declaration.*

Filed October 23, 1894.

In the Supreme Court of the District of Columbia.

THOMAS W. STEWART

VS.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

} At Law. No. 29581.

The defendant says that the amended declaration filed in the above-entitled cause is bad in substance.

HAMILTON & COLBERT,

*Att'ys for Defendant.*

NOTE.—Among the matters of law intended to be relied on in support of the foregoing demurrer are the following:

1. There can be no recovery in the District of Columbia for the death of the plaintiff's intestate in the State of Maryland by the alleged wrongful act of the defendant.

2. The provisions of the Maryland act cannot be enforced in the District of Columbia.

1894, October 23rd.—Demurrer to amended declaration sustained and judgment thereon for defendant for costs.

*Order for Appeal and Citation.*

Filed October 24, 1894.

In the Supreme Court of the District of Columbia, the 24th Day of October, 1894.

THOMAS W. STEWART, Administrator,	} At Law. No. 29581.
<i>vs.</i>	
THE BALTIMORE AND OHIO RAILROAD COMPANY.	

The clerk of said court will please enter an appeal from the judgment of the court sustaining the demurrer of the defendant, The Baltimore and Ohio Railroad Company, to the plaintiff's amended declaration, and issue citation on said appeal.

COOK AND SUTHERLAND,  
*Attorneys for Plaintiff.*

6 In the Supreme Court of the District of Columbia.

THOMAS W. STEWART, Administrator of the	} At Law. No. 29581.
Estate of John Andrew Casey,	
<i>vs.</i>	
THE BALTIMORE AND OHIO RAILROAD COMPANY.	

The President of the United States to the Baltimore and Ohio Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, on the 7th day of January, A. D. 1895, pursuant to an appeal filed in the clerk's office of the supreme court of the District of Columbia on the 24th day of October, 1894, wherein Thomas W. Stewart, administrator of the estate of John Andrew Casey, is appellant and you are appellee, to show cause, if any there be, why the judgment—decree—rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 24th day of October, in the year of our Lord one thousand eight hundred and ninety-four.

Seal Supreme Court  
of the District of  
Columbia.

JOHN R. YOUNG, *Clerk.*



Service of the above citation accepted this 24th day of October, 1894.

HAMILTON & COLBERT,  
*Attorney- for Appellee.*

(Endorsed :) No. 29581. Law. Thos. W. Stewart, adm'r, vs. Baltimore and Ohio Railroad Company. Citation. Issued Oct. 24th, 1894. Served cop- of the within citation on ———, ———, marshal. Cook & Sutherland, attorney- for appellant.

Supreme Court of the District of Columbia.

I, J. R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 7, inclusive, are true copies of the originals in cause No. 29581, at law, wherein Thomas W. Stewart, administrator of the estate of John Andrew Casey, late of the District of Columbia, is complainant and the Baltimore and Ohio Railroad Company is defendant, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia. 7 In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 5th day of November, A. D. 1894.

JOHN R. YOUNG,  
*Clerk Supreme Court District of Columbia.*

Endorsed on cover: District of Columbia supreme court. No. 403. Thomas W. Stewart, adm'r, &c., appellant, vs. The Baltimore and Ohio Railroad Company. Court of Appeals, District of Columbia. Filed Dec. 1, 1894. Robert Willett, clerk.

8 THURSDAY, March 19th, A. D. 1895.  
THOMAS W. STEWART, Administrator of the Estate of }  
John Andrew Casey, Appellant, } No. 403.  
vs.  
THE BALTIMORE AND OHIO RAILROAD COMPANY. }

The argument in the above-entitled cause was commenced by Mr. Edwin Sutherland, attorney for the appellant, and was continued by Mr. M. J. Colbert, attorney for the appellee.

Wednesday, March 20th, A. D. 1895.

THOMAS W. STEWART, Administrator of the Estate of }  
John Andrew Casey, Appellant, } No. 403.  
vs.  
THE BALTIMORE AND OHIO RAILROAD COMPANY. }

The argument in the above-entitled cause was continued by Mr. George E. Hamilton, attorney for the appellee, and was concluded by Mr. William A. Cook, attorney for the appellant.



9 THOMAS W. STEWART, Administratrix of the  
Estate of John Andrew Casey, Appellant,  
vs.  
THE BALTIMORE AND OHIO RAILROAD COMPANY. } No. 403.

*Opinion.*

Mr. Justice Cox, of the supreme court of the District of Columbia, who sat with the court in the hearing of the case in the place of Mr. Justice Morris, delivered the opinion of the court:

This case was as follows: John Andrew Casey, late of the District of Columbia, was employed as postal clerk in the service of the United States, and on a car of the defendant company, when, on the 6th of October, 1888, he was killed in a collision on the defendant's road, in the State of Maryland, between two stations known as Dickerson and Tuscarora, through the negligence, as it is alleged, of the defendant's agents. He left a widow, Alice Triplett Casey, but no parent or child.

10 The plaintiff took out letters of administration on Casey's estate in the District of Columbia, and brought this suit for the use of the widow, to recover damages for the wrongful negligence which caused the death.

The declaration contains two counts. They both show the death to have been caused in the State of Maryland. But the first count claims relief generally, as if it might be had under the laws of the District; whereas the second sets forth the provisions of the Revised Code of Maryland, affecting this subject, and bases the claim upon them. A demurrer was filed on these grounds, viz:

1. There can be no recovery in the District of Columbia for the death of the plaintiff's intestate in the State of Maryland, by the alleged wrongful act of the defendant.

2. The provisions of the Maryland act cannot be enforced in the District of Columbia.

The demurrer was sustained, and judgment entered for the defendant, from which the plaintiff appealed to this court.

It is very clear that the act of Congress, 23 Stat. at Large, p. 307, providing relief for cases like that described in the declaration, applies only to such casualties occurring in the District of Columbia, and is inapplicable to the present case. The demurrer, therefore, is well taken as to the first ground alleged, which is understood to present this question.

The only debatable question is, whether this action can be maintained by virtue of the provisions of the code of Maryland set out in the declaration.

The Maryland law, like those of the States generally, and our act of Congress, in its main features, is copied from Lord Campbell's act, and provides that: "Whenever the death of a person shall be caused by the wrongful act, neglect or default of another, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover

damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death shall have been caused under such circumstances as amount in law to felony."

In respect to the form of remedy provided, it differs from other statutes. It enacts that, "every such action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the State of Maryland, for the use of the person entitled to damages, and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the above-mentioned parties, in such shares as the jury, by their verdict, shall find and direct."

In contrast with this, our statute provides that, "Every such action shall be brought by and in the name of the personal representative of the deceased person;" and that the damages recovered "shall inure to the benefit of his or her family, and be distributed according to the provisions of the statute of distributions in force in the District of Columbia."

Under the law of Maryland, the damages for the injury described in this case would go to the wife. Under our statute, if it had occurred in the District, they would be divided equally between the wife and any collateral next of kin.

It will thus be seen that the equitable plaintiff is seeking to recover damages given by a law of Maryland for an injury suffered in that State, by means of a remedy provided by the laws of this District for an injury suffered here. Can this be done?

The case of *Dennick v. Railway Co.*, 103 U. S., 11, is, of course, the leading authority for us on this subject of recovery for injuries causing death. That was an action by the administratrix of a party killed, through negligence, in New Jersey, who had taken out letters and brought her action in New York. The laws of New York and New Jersey were similar, and gave the right of action to the same person, the personal representative. When the court decided to apply the rule of State comity to torts, which had theretofore only applied to contracts, *i. e.* when they held that what was made an actionable tort in one State must be so treated everywhere else, there was no difficulty in holding that the person to whom the right of action was given in both States might sue in either.

But the present case presents quite a different question, the action being brought by a person to whom the statute under which relief is sought does not give a right of action.

The case of *Dennick v. Railway Co.*, like all others, recognizes the right to damages for an injury causing death as a novelty in the law—as a right which did not exist at common law, but which is entirely statutory. And here the plaintiff is confronted with the rule, that, in such case, the remedy provided by the statute is the only one that can be resorted to.

This was recognized in the case of *Pollard v. Bailey*, 20 Wall., 520. A law of Alabama made stockholders of a bank individually liable for the debts of the bank, and according to the construction given to the law by the Supreme Court, the remedy provided by the law was a suit in equity, whereas in that case a single creditor had sued one of the stockholders at common law. The court said: "The individual liability of stockholders in a corporation for the payment of its debts is always a creature of statute. At common law it does not exist. The statute which creates it may also declare the purposes of its creation and provide for the manner of its enforcement. \* \* \* The liability and the remedy were created by the same statute. This being so, the remedy provided is exclusive of all others. A general liability created by statute, without a remedy, may be enforced by an appropriate common-law action. But when the provision for the liability is coupled with a provision for a special remedy, that remedy, and that alone, must be employed."

So, in the case of *Fourth National Bank of New York v. Franklyn*, 120 U. S. 747, it appeared that the statutes of Rhode Island made the stockholders of a manufacturing corporation individually liable for its debts, and directed that the proceeding to enforce the liability should be either by suit in equity or by action

11 of debt on a judgment first obtained against the corporation.

It was held that a creditor could not bring a suit at law against the executor of a stockholder of a Rhode Island corporation in the State of New York without having obtained judgment against the corporation, even if the corporation had been adjudged bankrupt. The court reaffirmed the doctrine of *Pollard v. Bailey*, saying: "In all the diversity of opinion in the courts of the different States upon the question how far a liability imposed upon the stockholders in a corporation by the law of the State which creates it, can be pursued in a court beyond the limits of that State, no case has been found, in which such a liability has been enforced by any court, without a compliance with the conditions applicable to it under the legislative acts and judicial decisions of the State which creates the corporation and imposes the liability. To hold that it could be enforced without such compliance would be to subject stockholders residing out of the State to a greater burden than domestic stockholders. The provisions of the Rhode Island statutes which made the stockholders of the Atlantic De Laine Company liable for its debts was coupled with provisions prescribing the form of the remedy. \* \* \* By the decisions of this court, as well as by those of the courts, both State and Federal, held within the State and district of Rhode Island, and of the highest court of Massachusetts, where these provisions had their origin and their first judicial construction, this liability can be enforced only in the mode prescribed by the statutes of Rhode Island. The present suit, therefore, not being a bill in equity, or an action upon a judgment against the corporation, which are the only forms of remedy authorized by these statutes, but being an independent action at law

upon the original liability of the stockholder, cannot be maintained, and the circuit court rightly so held.

These cases seem to fit the present case exactly. If the legislature of Maryland had simply declared, generally, that a person causing the death of another wrongfully or negligently, should be liable in damages to the family of the deceased, they might, in their own names, have instituted suit. But since a particular form of action is prescribed, they are confined to that.

Again, it must be very clear that this action could not have been maintained in the State of Maryland. To hold that it can be maintained here would be to subject the defendant to different kinds of suits in every State in which they may happen to be instituted, which could not have been intended.

There may be the best of reasons for confining the parties intended to be benefited to the very form of relief provided in the statute. The policy of the Maryland law was to confine that relief to the immediate family of the deceased, viz: the wife, parent and child of a man. But in some of the States, it is extended to collaterals, and in others it enures to the estate generally. *Tiffany's Death by Wrongful Act*, sec. 25, 81. While it is true that an administrator suing in another State to enforce rights given by the statute of Maryland, might, as the Supreme Court say in *Dennick v. Railway Co.*, be required by the court to apply the proceeds according to the Maryland law, yet, on the other hand, it is also true that the administrator is subject to the law of his State, and by that law he might not be allowed to make such application, but might be required to administer them for the benefit of creditors and next of kin generally, which would be entirely contrary to the policy and intent of the Maryland law, which does not treat the damages recovered as the subject of administration.

We are, therefore, of opinion that the present suit by the administrator, to claim the damages allowed by the Code of Maryland for the injury alleged in the declaration, cannot be maintained, and that an action therefor can only be maintained, under that code, by and in the name of the State of Maryland.

But we further think, that even this form of action was not intended by the Maryland Code to be authorized except in the courts of that State. It is incredible that the State would consent or intend to be a suitor in the courts of another jurisdiction, in a matter not of public interest, especially where it would or might be for the use of a citizen of another State against her own citizens. And that is exactly this case, the defendant being incorporated by, and being, for certain purposes, a citizen of Maryland.

Again, the statute of Maryland gives the action for the use of the wife, parent and child, not apportioning the damages among them, but leaving that to be done by the trial jury; and it is hardly to be supposed that the State of Maryland would attempt to impose a duty of that sort upon juries of other States, or any others than the juries subject to her legislative control.

If such be the intent of the Maryland statute, it would seem that no relief can be had under it in any other State.

A similar question was made in the case of Bruce's Adm'r v. Cincinnati Railroad Co., 83 Kentucky, 174. That was a suit in Kentucky against the railroad company, by the administrator of a brakeman killed in a collision on defendant's road in Tennessee. The court say (page 183): "But counsel suggest, as a question, whether the Tennessee statute confers the right of action, in a case like this, alone upon a personal representative of its own appointment, or on any personal representative. The tacit adoption of it by this State being presumed the main inquiry is, whether the operation of the statute is, by its own terms or by fair construction, restricted to that State. If it is, then the controversy is at an end, for no one can maintain an action under it in this State." And again, referring to a previous case, of Taylor's Adm'r v. The Pennsylvania Company, 78 Ky., the court say: "It was true that it was held in that case that the Indiana statute was not intended to have any extraterritorial operation. But the reason it was so held was, that the administrator appointed under the laws of this State could not take the right of action in that case in virtue of his office, but as a trust for the widow, children and next of kin of the deceased; and thus he would have to be invested with rights and perform duties which the Indiana legislature had no power to prescribe, and

12 which it is presumed it did not intend to prescribe, except as to personal representatives appointed in that State." Again: "But it is proper to say that in our opinion, whenever the statute of another State gives a right of action for the destruction of the life of one person, by the negligence of another, such action may be maintained here, unless the court is satisfied it was not intended to operate beyond the limits of the State enacting it."

The above language is particularly appropriate to that part of the Maryland statute referring to the duty of juries in actions under the statute. That State had no power, and could not have intended, to charge upon the juries of other States the duty of deciding the claims of the respective beneficiaries to damages recovered in these actions.

The final objection to the maintenance of the present action is one foreshadowed in what has already been said, viz., that, in the language of Story's Conflict of Laws, sec. 556: "It is universally admitted and established, that the forms of remedies, and the modes of proceeding, and the execution of judgments, are to be regulated solely and exclusively by the laws of the place where the action is instituted; or, as the civilians uniformly express it, according to the *lex fori*;" and that the proceeding directed by the Maryland Code is entirely foreign to the forensic law of this District, and could not be prescribed by the State of Maryland, for the government of our courts.

One of the very questions to be determined by the *lex fori* is, Who is to sue for a wrong? For example, as between assignor and assignee of a chose in action, that is to be determined by this law (Story's Conflict of Laws, sec. 566); and in common-law courts this would be held in one way, while in courts governed by the Roman

civil law it might be different. See, also, a discussion of this subject in Glenn v. Busey, 5 Mackey, 243.

The Maryland Code recognizes a death wrongfully caused as an injury to the wife, child and parent of the decedent. In this District, while we recognize actions *ex contractu* as properly brought by one for the use of another, an action *ex delicto* of that kind is unknown. By the common law, which is our *lex fori*, an action of that kind must be brought by the party injured, an exception being made only by our statute in relation to deaths wrongfully caused in this District, in which case, as if the cause of action survived, the personal representative may sue and distribute any damages recovered as the rest of the personal estate of the decedent, according to our statute of distributions. We are compelled by the authority of Dennick v. Railway Co., to recognize the right to indemnity of the family of a decedent whose death was caused in Maryland by negligence; but we are not obliged to recognize the State of Maryland as a proper suitor in our courts in their behalf.

Again, the statute of Maryland gives the right to damages to the wife, parent and child of a male victim, but instead of designating the proportions in which they shall be entitled, leaves that to be decided by a jury. Suppose the statute had in terms provided that in any suit brought in another State for a death wrongfully caused in Maryland, the damages should be divided among the parties in such manner as should be decided by the court trying the suit; could it be maintained that the court of a sister State could derive any authority or jurisdiction from the act of Maryland so to decide? And could it, with even as much show of reason, be held that the statute in question could impose a duty upon the court so to decide? And if not the court, could the jury of another State be charged with any such duty?

These questions must be answered in the negative. If the legislature of Maryland, instead of defining rights, leaves them to be decided elsewhere, it may speak with authority as to the tribunals of their own State, but they can neither confer authority nor impose a duty on those of another jurisdiction. If so, their statute under consideration cannot be executed in this District.

The equitable plaintiff, then, would seem to be in this predicament, to wit, that she cannot sue, claiming under the law of Maryland, except by and in the name of that State, and that she cannot bring such a suit in this District because, first, the statute does not authorize such a suit, and next, because it could not authorize such a suit, if the legislature of Maryland had so intended.

We are therefore satisfied that the demurrer was properly sustained. The judgment must be affirmed.



MONDAY, April 1st, A. D. 1895.

13

THOMAS W. STEWART, Administrator of the  
Estate of John Andrew Casey, Appellant,  
vs.  
THE BALTIMORE AND OHIO RAILROAD COM-  
PANY.

April Term, 1895.  
No. 403.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel; on consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE COX.

April 1, 1895.

THURSDAY, April 4th, A. D. 1895.

14

THOMAS W. STEWART, Administrator of the Estate of  
John Andrew Casey, Appellant,  
vs.  
THE BALTIMORE AND OHIO RAILROAD COMPANY.

No. 403.

On motion of Mr. Edwin Sutherland, attorney for the appellant in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving bond in the sum of four hundred dollars.

15

Know all men by these presents that we, Thomas W. Stewart, administrator of the estate of John Andrew Casey, as principal, and S. M. Pool, as surety, are held and firmly bound unto the Baltimore and Ohio Railroad Company in the full and just sum of four hundred dollars, to be paid to the said The Baltimore and Ohio Railroad Company or its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of April, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between Thomas W. Stewart, administrator of the estate of John Andrew Casey, appellant, and The Baltimore and Ohio Railroad Company, appellee, a judgment was rendered against the said Thomas W. Stewart, administrator of the estate of John Andrew Casey, and the said Thomas W. Stewart, administrator of the estate of John Andrew Casey, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Baltimore and Ohio Railroad Company, citing and admonishing it to be and appear at a Supreme Court of



the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Thomas W. Stewart, administrator of the estate of John Andrew Casey, shall prosecute said writ of error to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

THOS. W. STEWART. [SEAL.]  
S. M. POOL. [SEAL.]

Sealed and delivered in the presence of—

PAUL J. QUINN.  
JAMES L. MOCK.

This bond is satisfactory.

G. E. HAMILTON,  
M. J. COLBERT,  
*For Appellee.*

Approved by—  
R. H. ALVEY, *Ch. Justice.*

[Endorsed:] No. 403. Thomas W. Stewart, adm'r of estate of John Andrew Casey, *vs.* The B. & O. R. R. Co. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Apr. 22, 1895. Robert Willett, clerk.

16 UNITED STATES OF AMERICA, *ss*:

To the Baltimore and Ohio Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Thomas W. Stewart, administrator of the estate of John Andrew Casey, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 23d day of April, in the year of our Lord one thousand eight hundred and ninety-five.

R. H. ALVEY,  
*Chief Justice of the Court of Appeals  
of the District of Columbia.*

Service accepted.

G. E. HAMILTON,  
M. J. COLBERT,  
*Attorneys for Appellee.*

April 23, 1895.

[Endorsed:] Court of Appeals, District of Columbia. Filed Apr. 23, 1895. Robert Willett, clerk.

17 UNITED STATES OF AMERICA, ss :

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between Thomas W. Stewart, administrator of the estate of John Andrew Casey, appellant, and The Baltimore and Ohio Railroad Company, appellee, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23d day of April, in the year of our Lord one thousand eight hundred and ninety-five.

ROBERT WILLETT,

*Clerk of the Court of Appeals of the District of Columbia.*

18 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 17, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Thomas W. Stewart, administrator of the estate of John Andrew Casey, vs. The Baltimore and Ohio Railroad Company, No. 403, April term, 1895, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 26th day of April, A. D. 1895.

ROBERT WILLETT,

*Clerk of the Court of Appeals of the District of Columbia.*

Endorsed on cover : Case No. 16,128. District of Columbia Court of Appeals. Term No., 396. Thomas W. Stewart, administrator of the estate of John Andrew Casey, plaintiff in error, vs. The Baltimore and Ohio Railroad Company. Filed January 6, 1896.